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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9,

Petitioners,

vs.

ANHEUSER-BUSCH, INC., a Corporation,

Respondent.

No. 97.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

RESPONDENT'S BRIEF.

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IN THE

SUPREME COURT OF THE UNITED STATES.

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LLOYD WEBER, RUSSELL DAVIS, WALTER PATRICK, THOMAS BLAKE, ALBERT MELTON, WINFIELD SCOTT MUSLER, ROBERT HAMMER, WILBERT A. REEB, BERNARD SIEMER, and THOMAS MULVANEY, Individually and as Representatives of the INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT NO. 9, Petitioners, vs. ANHEUSER-BUSCH, INC., a Corporation, Respondent.	No. 97.

On Writ of Certiorari to the Supreme Court of the State of Missouri.

RESPONDENT'S BRIEF.

STATUTES OF THE STATE OF MISSOURI INVOLVED.

The case involves the action of the Circuit Court of Missouri in enjoining the violation of Missouri statutes which prohibit restraints of trade and prescribe both criminal and civil penalties for violations.

The Missouri anti-trade restraint statutes are contained in Chapter 416 of the official compilation, entitled "Monopolies, Discriminations and Conspiracies" (2 Revised Statutes of Missouri, Sec. 416.010 et seq., pp. 3318-3320; 21 V. A. M. S., Sec. 416.010 et seq., pp. 849, 869-872, 877). The pertinent provisions of these statutes are set out in Appendix A of this brief.

THE QUESTION PRESENTED.

The question presented is whether conduct which violates State law, both common law and statutory law, including a State criminal statute, applicable alike to all citizens of the State, is removed from the control of the State and is therefor ungoverned because some of the parties involved in the unlawful conduct are members of a labor organization and claim immunity under the Labor Management Relations Act, 1947 (c. 120, 61 Stat. 136 et seq.).

STATEMENT OF THE CASE.

This action arose in the City of St. Louis, Missouri, in the early spring of 1952 (R. 1).

Respondent is the operator of the largest brewery in the St. Louis, Missouri, area (R. 104).

Petitioners, members of a labor organization commonly called the "Machinists", are the bargaining representatives of some 220 employees of respondent who are regularly engaged in repair and maintenance work on machinery which has already been installed by independent contractors at respondent's brewery (R. 24, 106). Petitioners have been certified by the National Labor Relations Board as bargaining representatives for these employees of respondent (R. 25).

At the time this action arose, no labor dispute existed between petitioners and respondent (R. 97, 109), and this

fact was clearly stated in the record by respondent's counsel at the outset of the presentation of evidence in the Circuit Court of St. Louis, Missouri (R. 19).

At the time this action arose, petitioners had formed a combination of labor (the petitioners) and business (Griesedieck Western Brewery Company) for the purpose of refusing to deal with any independent construction contractor in the St. Louis, Missouri, area who would not agree to break his existing collective bargaining agreement with his Millwright employees covering the moving, erecting and installing of machinery in new construction and reconstruction of buildings, and to hire Machinists for this purpose (R. 32, 24, 108, 109); all the construction contractors in the St. Louis area had valid existing contracts with the Millwrights' Union covering the doing of this work; none of the contractors had contracts with the Machinists (R. 36, 106). Petitioners intended to get all local breweries to join the combination (R. 32, 108). A combination of labor and business such as had been formed by petitioners violates the Missouri common law of restraint of trade and the Missouri anti-trade restraint statute, which is declarative of this common law, and subjects the individual members of the combination to civil liability for damages and to punishment as felons under the Missouri criminal law (R. 109, 111). Such an unlawful combination is designated a "conspiracy" under Missouri law and is frequently so referred to by its Courts.

The Supreme Court of Missouri in the instant case held this combination to be a violation of the Missouri civil and criminal law aforesaid (R. 111). At the time of suit the combination was composed of petitioners (labor) and Griesedieck Western Brewery Company (business) and had the purpose of refusing to deal with any construction contractor who did not break his existing contract with his Millwright employees. In respondent's brief, this com-

bination of labor and business is designated the **"first combination"** for convenient reference.

Petitioners wanted respondent to join the conspiracy, believing that then the other breweries in the area would follow (R. 41); however, respondent refused, upon advice of legal counsel, to violate the Missouri law (R. 34, 40, 107).

In the spring of 1952 petitioners and respondent were in the process of negotiating a new collective bargaining agreement covering the Machinist employees of respondent (R. 31).

Meeting of the minds was had on every element of the new bargaining agreement which pertained to the work performed in respondent's brewery (R. 34, 40, 108). However, petitioners selected this occasion to force respondent to join their unlawful conspiracy of labor and business (R. 40). They demanded the insertion of a certain Section 2 of Article VII in the proposed agreement, under the general heading of "Jurisdiction," and stated that this section would represent the obligation of respondent to carry out the unlawful purpose of the conspiracy (R. 32, 108).

Petitioners stated that unless respondent agreed to join this conspiracy of labor and business, petitioners would assert a specious continuing disagreement over points of the collective bargaining agreement which, in truth, had already been settled (R. 34, 110). Then, they stated, petitioners would call a strike of Machinists at respondent's plant (R. 33), and by the establishment of picket lines would prevent the commercial operation of respondent's brewery (R. 34).

Under Missouri law, if respondent joined the conspiracy of labor and business, although it remained entirely passive in its membership, respondent became subject to

criminal prosecution as a felon along with all other members for acts done by any member in furtherance of the objects of the unlawful conspiracy (R. 109).

The Supreme Court of Missouri in the instant case declared that the undertaking by the petitioners acting in concert to coerce respondent to join the unlawful conspiracy of labor and business against the Millwrights and the construction contractors was a violation of the Missouri civil and criminal law aforesaid (R. 111, 112). In respondent's brief, this concerted undertaking by petitioners to coerce respondent to commit the felony of joining the first combination is designated the "**second combination**" for convenient reference.

When respondent explained to petitioners that it would not join the unlawful first combination, on advice of counsel that it was unlawful, petitioners repeated their threats and, this failing, called a strike (R. 34). Picket lines were established (R. 24). Respondent could not get supplies or make shipments, and its food in process was in danger of spoiling (R. 33, 109, 110). The picketing of respondent's plant by the second combination, to coerce respondent to join the first combination, was declared by the Supreme Court of Missouri to be a local transportation combination which unlawfully prevented transportation of materials into and out of respondent's plant (R. 112).

After the picketing had begun, petitioners repeated that they had no dispute with respondent except over respondent's refusal to join the unlawful conspiracy of business and labor (R. 34, 40). It had to be that, said petitioners, or else respondent's plant would continue to be immobilized (R. 40, 111).

No issue of any sort, whether "labor" or "commercial," was then involved between petitioners and respondent other than participation of respondent in the unlawful first combination of labor and business against the Mill-

wrights and the independent construction contractors (R. 112). No work was then being performed on respondent's premises by anyone which was of the type that would be affected by the unlawful conspiracy (R. 36). Respondent had no facilities for doing this type of work and, with one exception provoked by petitioners, never had attempted to do so with its own employees. When the necessity for the doing of such work arose, respondent invariably contracted it out to independent construction contractors who used their own employees to do the work (R. 36, 106).

Upon respondent's complaint the Circuit Court of St. Louis, Missouri, issued a temporary restraining order against the picketing. Thereafter the trial Chancellor heard the evidence and found the above facts, and entered a permanent injunction against the picketing by the second combination which the Chancellor found was for the sole purpose of compelling respondent to participate in said unlawful first combination of business and labor (R. 83, 80).

The facts thus found by the Chancellor and the terms of the injunction were affirmed by the Supreme Court of Missouri (R. 105, 110).

SUMMARY OF ARGUMENT.

I.

This case involves the right of the Courts of Missouri to issue an injunction against picketing by a labor organization (petitioners) which constitutes the means of coercing a business organization (respondent) to commit the felony under Missouri law of joining a combination which itself is illegal under the Missouri law and under the Sherman Act.

The combination which respondent was being coerced to join was a completed combination composed of petitioners and one local brewery, for the purpose of refusing to deal with independent construction contractors until the contractors broke their valid, existing contracts with the Millwright organization. This combination is doubly illegal, first for its purpose of inducing breach of contract, and second as a combination of labor and business for the unlawful purpose.

Respondent has uniformly contended that the action of the Courts of Missouri upon this fact situation has the purpose of preserving the integrity of its laws of general application against restraint of trade, and that Federal labor law is relevant only to show that coercion to commit a felony has no sanction under any Federal law, whether bottomed on labor policy or on policy against restraint of trade.

The Courts of Missouri found the combination of labor and business to be illegal under Missouri law and that membership of respondent therein would constitute commission of a felony by respondent under the Missouri law. The Courts of Missouri found that the action of petitioners to coerce respondent to commit the felony constituted an illegal transportation combination under the Missouri law.

restraining transportation of materials into and out of respondent's brewery. The picketing by the illegal transportation combination was enjoined.

In affirming the injunction the Supreme Court of Missouri followed its established policy with respect to restraint of trade, which policy has been approved by this Court in the case of Giboney v. Empire Storage & Ice Co., and did not act in the field of labor law. Its judgment should be affirmed.

II.

If petitioners' contention that the action of the Supreme Court of Missouri was taken in the general field of labor law is accepted, its action was directed only against obviously illegal means voluntarily adopted by petitioners to achieve their ultimate objective.

The coercion of respondent to commit a felony was illegal; the completed combination of labor and business for the purpose of refusing to deal with independent construction contractors was illegal; and the action sought to be coerced from the construction contractors by the concerted refusal to deal, i. e., breach by the contractors of their existing contracts with the Millwrights, was illegal.

In these circumstances the area of labor law touched by the Courts of Missouri in enjoining a criminal restraint of trade under Missouri law is an area reserved to the States, and the conduct of petitioners in that area which was acted on by the Courts of Missouri is neither protected nor proscribed by any Federal labor law.

ARGUMENT.

I.

THE CASE PRESENTED A SITUATION OF COERCION TO COMMIT A FELONY UNDER MISSOURI LAW, AND WAS SO ACTED UPON BY THE COURTS OF MISSOURI.

Introduction.

This case involves a permanent injunction issued by the Circuit Court of the City of St. Louis, Missouri, and affirmed by the Supreme Court of Missouri. The injunction prohibits a specific type of coercion by petitioners, directed against respondent for the purpose of compelling respondent to commit an act declared to be a felony under the statutes of Missouri. Under the settled law of Missouri respondent's right to relief in these circumstances is in no way dependent upon, or limited by, the fact that petitioners are members of a labor organization.

Petitioners here contend that they have acquired a special immunity from application of Missouri law, and that this immunity arises out of the National Labor Relations Act, as amended by the Taft-Hartley Act (Labor Management Relations Act, 1947, 61 Stat. 136, C. 120, 29 U. S. C. A., Secs. 141-187).

It has been the position of respondent throughout this case that petitioners' agreement in concert with a member of the local brewing industry that brewers shall refuse to deal with independent construction contractors in the St. Louis area until these contractors break certain valid existing contracts, said agreement to be expanded to include other members of the local brewing industry as quickly as they can be coerced into joining, created a trade restraint upon the contractors, which consists of con-

certed withholding of dealing by the brewers. In respondent's brief, this combination of labor (the petitioners) and business (Griesedieck Western Brewery Company) is designated the **"first combination"** for convenient reference. An agreement for a concerted withholding of dealing has always been and still is a per se violation of the Sherman Anti-Trust Law[1] and the Anti-Trade Restraint Law (conspiracy statute) of Missouri,[2] as well as of Missouri common law, on the part of each participant or member in the combination. This fact was reaffirmed by the Supreme Court of Missouri in the instant case (R. 109). No Federal legislation has expressed or implied an intention to change this fundamental policy.

Becoming a member of this combination or conspiracy is without more a felony under Missouri law, and under Missouri law respondent is entitled to an injunction against any conduct by anyone which is directed toward coercing respondent to commit a felonious act.

Petitioners formed a **second combination**, consisting solely of its own membership, to coerce respondent to commit the felony under Missouri law of joining the unlawful combination of brewers refusing to deal with construction contractors until valid contracts had been broken. This **second combination** had a narrow and obviously illegal purpose: compelling commission of a crime by respondent, a business organization. Since the second combination utilized a stoppage of transportation into and out of respondent's plant in attempting to achieve its unlawful purpose, the second combination was a "local transportation combination" which likewise violated the Missouri Anti-Trade Restraint Statute. It was so found by the Supreme Court of Missouri (R. 112).

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[1] 26 Stat. 209, C. 647, 15 U. S. C. A., Sec. 1 et seq.

[2] 2 R. S. Mo., Sec. 416.010 et seq., set out in Appendix A of this brief.

In no stage of the proceedings did the Courts of Missouri seek to act on the **first combination** of labor and business. The Courts of Missouri did act on the **second combination** of petitioners acting in concert, and did enjoin the coercion of respondent by this second combination to commit the felony of joining the first combination.

It has been the position of respondent throughout this case that the conduct of petitioners to coerce respondent to commit a felony, although it utilized a labor "form"—picketing—should not be considered or judged within a framework of labor policy or labor law, because it was a means chosen by petitioners in an attempt to coerce respondent to violate the general Missouri law, and the felony if committed by respondent would exist independent of and without regard to any "labor law," State or Federal.

That is why respondent earnestly contends that the instant case between petitioners and respondent is neither a "labor dispute" nor an "unfair labor practice." The **motives** or indirect objectives now claimed by petitioners must be disregarded because the **means** which they have selected are per se a violation of State and Federal anti-trade restraint laws and run afoul of common decency.

A. Respondent's Original Petition Alleged All the Necessary Facts Showing Restraint of Trade and Sought the Remedy of Injunction Under the Laws of Missouri. The Case Was Presented on That Theory.

At the outset of the hearing of the evidence before the trial Chancellor in the Circuit Court of Missouri, the position of respondent was stated by its counsel as follows (R. 19):

> *"The plaintiff (respondent here) does not wish to be understood as in any way contending in this case that this Court has before it for consideration, decision or resolution, by this Court, a labor dispute.*

"There is reference in the petition to a labor dispute and to a jurisdictional dispute between two labor unions. Those matters were, we believe, necessarily referred to in the petition, and we believe that they will necessarily also be referred to in the evidence.

"*The plaintiff, however, does not request any action by this Court with respect to, or with respect to resolving those labor controversies.*" (Italics and parenthetical matter ours.)

Judge Hulen of the United States District Court approved the position of respondent when this case was removed there by petitioners, on the ground that it involved a labor dispute over which the Federal tribunals have exclusive jurisdiction. In his memorandum opinion remanding the case to the State court, Judge Hulen said:

"*We do not read the petition as stating a cause of action in the nature of a labor dispute as such. Whether the petition states a good cause of action, we think, is a question for the State court and not this Court.*" (Italics ours.)

Respondent submits that clearly the foregoing rationale was properly applied by the Supreme Court of Missouri in dealing only with the second, or "local transportation combination" of petitioners, which the Court held to be illegal under the Missouri Anti-Trade Restraint statute and enjoined. However, respondent further submits that the result would not be altered if, as petitioners contend, all the facets of their dispute with the Millwrights and the motives and means of the **first combination** of labor and business must be examined in order to determine whether the injunction of the Supreme Court of Missouri against the **second combination** will stand. The same result will follow in either instance because not only is the second combination illegal as the means of coercing commission of a felony by respondent, but the first combination is illegal as the means of coercing breach of valid existing con-

tracts by the independent construction contractors, and additionally is illegal as a combination of labor and business for that illegal purpose. Such illegal means voluntarily adopted by petitioners will not be removed from the jurisdiction of the State whose laws they violate merely because petitioners, members of a labor organization, cite their ultimate objective of more jobs and better conditions for the membership which will come to pass in the period after all the felonious and otherwise illegal conduct has been completed.

The petition or complaint initially filed by respondent before the Circuit Court of the City of St. Louis alleged all the facts ultimately found by the Trial Chancellor and by the Supreme Court of Missouri. These facts included, as necessary background, the entire course of conduct of petitioners in their long standing jurisdictional dispute with the Millwrights, and petitioners' combination of labor and business and its purpose as against the Millwrights and contractors, as well as the strike at respondent's plant and the picketing of respondent's premises by petitioners to compel respondent to become a member of petitioners' combination of labor and business. The petition prayed only relief from petitioners' coercive picketing, in the form of an injunction under Missouri law, but it stated respondent's legal conclusion that the strike and the picketing also violated certain phases of Section 8 (b) (4) of the National Labor Relations Act as amended.

Respondent believed then, as it believes now, that if conduct is illegal per se under Federal anti-trust law and State anti-trust law because irrespective of any labor connotations it is coercion to commit a felony, the fact that one of the participants in the illegal conduct is a labor organization and **additionally** commits one or more acts which violate the N. L. R. A. does not deprive the State Court of jurisdiction to apply its laws to prevent the felony from being committed, where that application does

not require any consideration or determination of the legitimacy of any labor objectives.

Respondent never asked the State Courts to **apply** any Federal law, and the Trial Chancellor and the Supreme Court of Missouri clearly stated in their opinions that their decision was reached independently of any Federal law. It is now clear, on the basis of decisions of the N. L. R. B. and the Federal Courts that Section 8 (b) (4) of the N. L. R. A. requires that "presently existing work" be involved in Union demands, and so Section 8 (b) (4) did not cover the fact situation which had occurred at the time the Missouri Court assumed jurisdiction. Consequently the legal conclusions alleged in respondent's pleading before the Circuit Court, that petitioners' conduct also violated Section 8 (b) (4), were erroneous. These legal conclusions—whether valid or erroneous—were in any event mere surplusage under Missouri rules of civil procedure. They were not used by the Missouri Courts as a basis of their decision and consequently cannot affect the decision of the Supreme Court of Missouri based on grounds exclusively within State jurisdiction.

B. The Trial Chancellor and the Supreme Court Acted Upon Uncontroverted Facts Showing Restraint of Trade and Not Upon the Labor Dispute Asserted by Petitioners.

Petitioners in their pleadings, evidence and arguments before the Courts of Missouri sought to conjure up a labor dispute to mask their first combination of labor and business which violated the Missouri Anti-Trade Restraint law, and to mask their second combination of union members to compel respondent to join the first combination. Accordingly they emphasized an alleged collective bargaining dispute over payroll information (R. 70), equated the express language of the controversial Section 2 of Article VII to protection against a run-away shop (R. 68),

explained the picket line as solely an effort to get respondent to bargain in good faith (R. 71), and generally contended in argument that respondent was seeking to restrain their advancement of normal labor objectives.

But the Supreme Court of Missouri, sitting as a Chancery Court of original impression, had before it positive uncontroverted evidence of statements made by petitioners **before** any strike was called or any picket line set up, at a time when they falsely hoped that respondent would join their unlawful combination of labor and industry, and positive uncontroverted evidence of statements made by petitioner Weber **after** the picket line had been set up, when petitioners believed respondent would be compelled by their coercion to join the combination. These statements showed the language of Section 2 of Article VII was a mere sham or pretense for the actual agreement and action demanded by petitioners from the brewers of the St. Louis area. The true agreement and action demanded was a concerted refusal to deal with any construction contractor unless that contractor bound himself not to use Millwrights on the job (R. 32); that all the construction contractors in the area then had valid, exclusive contracts existing with Millwrights for the work, and no contractors had contracts with petitioners (R. 36); that to get business from the breweries in these circumstances the contractors would have to break their existing valid contracts with the Millwrights (R. 36); that respondent, if a member of the combination, was expected by petitioners to put the pressure on the contractors to this end, and that petitioners anticipated that the rest of the breweries in the area would follow respondent's lead (R. 40); that petitioners succeeded in recruiting one brewery (Griesedieck Western Brewery Company) in the area in the combination (R. 24).

Petitioner Weber, although in court, did not take the stand to refute this testimony.

1. The First Combination of Labor and Business Is Illegal Per Se. Membership of Respondent in the First Combination Would Be a Felony Under Missouri Law.

The Supreme Court of Missouri held from the uncontroverted substantial evidence that petitioners **had formed** a combination of labor and business for the purpose of causing a breach of contract between construction contractors and Millwrights. It stated the unquestioned general law in Missouri, as well as nationally, that

> "'A combination for the purpose of causing a breach of contract has been held to be an unlawful conspiracy * * * ' Rosen v. Alside, Mo Sup., 248 S. W. (2) 638, 643" (R. 112).

The Supreme Court of Missouri held that this unlawful combination or conspiracy of labor and business (the first combination) violated the Missouri Anti-Trade Restraint statute, and that the labor participants and the business participants in such an unlawful conspiracy all are responsible under the Missouri Anti-Trade Restraint statute, upon the authority of **Giboney v. Empire Storage & Ice Co.**, 336 U. S. 490, 60 S. Ct. 685, 93 L. Ed. 834 (R. 114).

The Supreme Court of Missouri held that if respondent joined the first combination it would be guilty of a felony under that same Missouri Anti-Trade Restraint statute (R. 109).

The Supreme Court of Missouri further found an unlawful combination composed exclusively of petitioners (the second combination) acting in concert through picketing to restrain transportation of goods into and out of respondent's plant, for the unlawful purpose of compelling respondent to commit the felony of joining the first combination (R. 111, 112). The injunction in the instant case is directed only against the picketing by the second combination.

The finding by the Supreme Court of Missouri of the completed first combination of labor and business for the purpose of inducing breach of contract, of which combination petitioners are members and agents, is established entirely without the necessity of reference to respondent, and without necessity of reference to any relationship or negotiations between petitioners and respondent.

The finding that this completed combination is forbidden by the Missouri Anti-Trade Restraint statute is unquestionably correct. A concerted refusal by business organizations to deal with other business organizations violates the Missouri statute even though no labor organization is a party. Each member of the combination is responsible, criminally and civilly under the statute, for all acts of any member [**Dietrich v. Cape Brewery & Ice Co.** (1926), 315 Mo. 507, l. c. 521, 286 S. W. 38, l. c. 43; **Walsh v. Assoc. of Master Plumbers** (1902), 97 Mo. App. 280, 71 S. W. 455]. The conduct is of the type described as being illegal *per se* under the Sherman Act.[3]

It has never been seriously contended under either Missouri or Federal law that participation of a labor organization in the unlawful combination serves to relieve the **business** members from criminal or civil liability under the anti-trade restraint statutes. The cases of labor-business combinations are concerned only with contentions of labor organizations that their conduct should be (or should remain) immune from operation of the trade restraint law. Under the Missouri Anti-Trade Restraint statute labor **as** labor has no special immunity, and this

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[3] U. S. v. Columbia Steel Co. (1948), 334 U. S. 495, 522, 68 S. Ct. 1107, 1121, 92 L. Ed. 1533, 1551. This Court, speaking through Mr. Justice Reed, said: "For example, where a complaint charges that the defendants have engaged in price fixing, or have concertedly refused to deal with non-members of an association, or have licensed a patented device on condition that unpatented materials be employed in conjunction with the patented device, * * * such restraints are illegal *per se*."

Court has upheld the application of the Missouri statute to the labor members of a combination of labor and business which had the purpose of refusing to deal with certain non-union ice peddlers. The combination had been found to be illegal under the Missouri Anti-Trade Restraint statute (Giboney v. Empire Storage & Ice Co., supra).

Under the Federal Anti-Trust laws, this Court has held that the special immunities granted to labor will not prevent application of the Sherman Act to a labor organization which combines with business in actions which, if undertaken by business alone, would violate the Act [**Allen Bradley Co. v. Local Union No. 3** (1944), 325 U. S. 797, 65 S. Ct. 1533, 89 L. Ed. 1939].

It is submitted that on the authority of these decisions membership in the completed first combination of petitioners (labor) and one local brewer (business) for the purpose of a concerted refusal to deal with construction contractors who did not break valid existing contracts was an activity **illegal per se for both labor and business under both** the State Anti-Trade Restraint law and the Federal Anti-Trust laws; but in any event it is a certainty that the membership therein of **respondent**, an additional representative of business, would be a violation of the Missouri Anti-Trade Restraint statute by respondent amounting to commission of a felony.

2. **The Second Combination, Composed of Petitioners Acting to Coerce Respondent to Commit the Felony, Likewise Is Illegal, and Its Activities Against Respondent Properly Were Enjoined.**

The Supreme Court of Missouri was not asked to act upon, and did not purport to act upon, the completed unlawful combination of labor and business (the first combination) and it did not in any way restrict the operation of that combination except with respect to the specific

concerted conduct of petitioners directed toward the coercion of respondent to join the first combination. This is the point of the Supreme Court's decision which is overlooked or ignored by petitioners, by the brief of The Congress of Industrial Organizations, and by the article "Federalism in the Law of Labor Relations" by Professor Cox in Volume 67, Harvard Law Review, page 1297, relied on by petitioners. We submit that this point is decisive of the issue raised by petitioners before this Court, because it demonstrates that the Supreme Court of Missouri in affirming the injunction against the picketing by petitioners (the second combination) was not required to consider labor law, or to make policy decisions in the field of labor law under the guise of applying the Missouri Anti-Trade Restraint law, as is so strongly contended here by petitioners and by the *Amicus Curiae*.

The Supreme Court of Missouri had before it the prayer of respondent, a Missouri corporation which thus far had resisted joining the completed unlawful first combination of labor and business. Respondent prayed that it be relieved from acts of coercion by petitioners, who were acting in concert in their second combination to compel respondent to join the first combination. In acting upon the petition the Supreme Court of Missouri initially had to find, and did properly so find, that a Missouri corporation which became a member of the combination proved by the substantial evidence was guilty of a felony under the Missouri Anti-Trade Restraint law and subject to the penalties prescribed in that law, even if the corporation took no affirmative steps beyond becoming a member (R. 109). The penalties are substantial, entailing:

(1) Criminal liability of its individual officers as felons under Section 416.050 of the Revised Statutes of Missouri for fine and/or imprisonment.

(2) Criminal liability of the corporation under Section 416.070 of the Revised Statutes of Missouri for:

(a) Forfeiture of its corporate charter, and

(b) Forfeiture of its properties in Missouri, or

(c) Payment of a fine to the State of Missouri.

(3) Civil liability for triple damages to any person injured by any acts of the combination under Section 416.090 of the Revised Statutes of Missouri.

Having so found, the Supreme Court of Missouri granted only relief from coercion to commit a felony, and said relief was in the form of an injunction against the type of coercion being then exerted, i. e., picketing by a combination of individuals (the second combination).

The fact that the persons attempting to coerce respondent to commit a felony in this case are members of a labor organization, and that these persons were using non-violent picketing which stops the flow of commerce and transportation into respondent's plant as their weapon of coercion, does not deprive the Courts of Missouri of authority to issue the injunction against coercion under authority of the Missouri Anti-Trade Restraint Act. The conduct of petitioners, whatever its nature, being for an unlawful purpose, was itself unlawful, and being concerted and in restraint of the flow of transportation was a "transportation combination" which violated the Missouri statute. That is the holding of the Supreme Court of Missouri (R. 112). And a labor organization which violates the Missouri statute by doing an act illegal per se (coercion of respondent to commit a felony) has no immunity **as labor** under the Missouri statute. That was the precise holding of this Court in the **Giboney** case, supra.

3. The Fact Situation Found by the Courts of Missouri Is Governed by Giboney v. Empire Storage & Ice Co. (1949), 336 U. S. 490.

The **Giboney** case involved an attempt by an ice handler's Union to unionize certain individual ice peddlers who

operated their own trucks in carrying on their own business of selling ice at retail. As part of the campaign the Union obtained agreements from all the manufacturers and distributors of ice in Kansas City except Empire not to sell ice to non-union peddlers. Empire refused to sign such an agreement or otherwise accede to the Union's demand that it cease selling ice to non-union peddlers, and the Union placed a picket line at Empire's plant with the resultant halting of substantially all deliveries to and from the plant by union truck drivers, stopping 85% of Empire's storage business. Empire brought suit to enjoin the picketing on the ground that it was pursuant to an unlawful combination in restraint of trade to prevent Empire from carrying on its business, including the sale of ice, and therefore the picketing was unlawful.

In upholding the injunction in the **Giboney** case, the Supreme Court of Missouri found that an unlawful combination existed between the Union and the other ice manufacturers for the purpose of refusing to sell to non-union ice peddlers, and that the Union was producing injury and damage to Empire, through a boycott of Empire's business, for the purpose of forcing Empire to join the unlawful combination or conspiracy. The combination of labor and business violated the Missouri anti-trade restraint statute, and the Supreme Court of Missouri held that since the defendant Union was using its picket line in the attempt to force Empire into this unlawful combination against the ice peddlers, the purpose of the picketing was unlawful and the picketing for the unlawful purpose would be enjoined (**Empire Storage & Ice Co. v. Giboney** [1948], 357 Mo. 671, 210 S. W. [2d] 55).

In affirming the judgment of the Supreme Court of Missouri, this Court said (336 U. S., l. c. 498, 69 S. Ct., l. c. 688, 93 L. Ed., l. c. 841):

> "• • • Thus all of appellants' activities—their powerful transportation combination, their patrolling,

their formation of a picket line warning union men not to cross at peril of their union membership, their publicizing—constituted a single and integrated course of conduct, which was in violation of Missouri's valid law. In this situation, the injunction did no more than enjoin an offense against Missouri law, a felony."

This Court also said (336 U. S., l. c. 497, 69 S. Ct., l. c. 688, 93 L. Ed., l. c. 841):

"* * * To exalt all labor union conduct in restraint of trade above all state control would greatly reduce the traditional powers of states over their domestic economy and might conceivably make it impossible for them to enforce their antitrade restraint laws. See Allen-Bradley Co. v. Local Union No. 3, I. B. E. W., 325 U. S. 797, 810, 65 S. Ct. 1533, 1540, 89 L. Ed. 1939, 1948. More than that, if for the reasons here contended states cannot subject union members to such antitrade restraint laws as Missouri's, neither can Congress. The Constitution has not so greatly impaired the states' or nation's power to govern."

Petitioners make an untenable point at pages 34-35 of their brief that the **Giboney** case is not in point because it contains no reference to the National Labor Relations Act of 1935 (29 U. S. C., Sec. 151-166, then in force) or to the alleged "pre-emption" by Congress of the field of labor law. We submit that such references do not appear in the **Giboney** decision for the very reason that respondent contends they have no application in the instant case. The only issues before the Courts of Missouri in the **Giboney** case and in the instant case were:

(1) whether membership by respondent (a business organization) in the combination of labor and business (the first combination) would be the commission of a felony by respondent, and

(2) whether the combination of petitioners (the second combination) was being used to compel respondent to join the first combination.

Neither of these issues required any determination of labor matters or resolution of labor policies.

In the **Giboney** case and in the instant case the Supreme Court of Missouri determined both issues affirmatively, and the injunction in each case was applied only against the second combination of petitioners acting in concert to make respondent commit a felony.

II.

IF THE COURTS OF MISSOURI ACTED IN THE FIELD OF LABOR LAW, THEY ACTED IN AN AREA RESERVED FOR THE STATES.

As stated in the preceding section of this brief, we believe that direct conduct to compel a business to commit a breach of State criminal law amounting to a felony is so direct an interference with the internal affairs of a State that the State may act under its police powers for the preservation of its legal system. We do not consider this to be action by the State in the field of **labor law**, regardless of how broadly or how narrowly that field is defined. We believe that the Supreme Court of Missouri so decided, and that it decided correctly.

However, if it is conceded for the sake of petitioners' entire argument that the Supreme Court of Missouri acted in the field of labor law, it is clear that the entire field has not been foreclosed to State action, and it is submitted that any action of the State of Missouri in the instant case deemed taken in the field of labor law lies in that area left by Congress for the States.[4]

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[4] "However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left

Petitioners' argument reasons backward from their assertion that "the essential interest, purpose and object in this case is to further the advantage of the Machinists" (Petrs' Br., p. 19). More exactly, petitioners' purpose was to get for their membership future work as employees of independent construction contractors, which work the contractors by valid existing contracts had agreed to give to the Millwrights.[5]

A. Petitioners' Labor Activities Were Feigned, and Were the Means of Coercing Commission of a Felony.

The Supreme Court of Missouri found from uncontroverted evidence that the language of Section 2 of Article VII was intended to be a mere sham or pretext for an actual agreement by the brewing industry to "go along" —or act in concert—to "put pressure on," or force contractors to break their valid contracts with Millwrights and employ Machinists (R. 111). The Court had before it competent evidence of statements by petitioners before the picketing began, that this was the only issue between petitioners and respondent, and that although petitioners would thereafter continue to make additional demands

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open an area for state control' and that 'the intention of Congress to exclude the States from exercising their police power must be clearly manifested.' Allen Bradley Local U. E. R. M. W. v. Wisconsin Employment Relations Bd., 315 U. S. 740, 749, 750, 86 L. Ed. 1154, 1164, 1165, 62 S. Ct. 820." International Union v. Wisconsin Empl. Rel. Bd. (Briggs & Stratton case), 336 U. S. 245, 253, 69 S. Ct. 516, 521, 93 L. Ed. 651, 662.

[5] Regardless of the literal meaning of Section 2 of Article VII, the work in question was construction work never done by ANY employees of respondent, regardless of affiliation, but always and necessarily contracted out to builders equipped for such projects (R. 38). There was no question of loss of work by employees of respondent, nor of making additional work for additional employees of respondent, nor of assignment of work within the job content of any of respondent's employees. Thus petitioners' purpose was not to prevent "subcontracting" or "contracting out" of production work by respondent, as is suggested by the brief of the *amicus curiae* at pages 23-27, and the authorities there cited.

and allegations of bargaining disputes these would be mere specious contentions of disagreement made as a matter of strategy, so that petitioners would not have to acknowledge their true position openly (R. 34).

August A. Busch, Jr., respondent's president, testified to similar admissions made to him by petitioner Lloyd Weber, Business Agent of the Machinists, after the picketing had begun. This testimony was given in open court, in the presence of Mr. Weber, without any contradiction whatever (R. 40, 41, 110, 111). If this conduct of petitioners be deemed to have the **form** of labor activity, it nevertheless has the **substance** and reality of a trade restraint which is universally condemned, and which traditionally has been subject to the power and authority of the States.

In **United Construction Workers v. Laburnum Construction Corporation** (1954), 347 U. S. 656, 74 S. Ct. 833, 98 L. Ed. 1025, this Court held that the States retain jurisdiction to apply their tort law of general application and their criminal laws of general application to unlawful conduct of a labor organization, notwithstanding the fact that the same conduct also violates Section 8 of the N. L. R. A. as amended. This Court said (347 U. S., l. c. 666, 98 L. Ed., l. c. 1032):

> "The 1947 Act has increased, rather than decreased, the legal responsibilities of labor organizations. Certainly that Act did not expressly relieve labor organizations from liability for unlawful conduct."

The **second combination**, which was composed exclusively of petitioners for the purpose of coercing respondent to commit a felony under Missouri law, existed in completed form before the picket line was established. Its unlawful purpose was announced to respondent before the picket line was established (R. 33, 34). At the time the announcement was made, the State of Missouri had subject to its jurisdiction all the elements of a presently exist-

ing violation of its civil and criminal Anti-Trade Restraint laws (R. 111, 112). It is unreasonable to contend, as do petitioners, that **thereafter** petitioners could achieve absolute immunity from State law by going one step further (picketing) along their course of unlawful conduct and then asserting that they were answerable only to Federal authority.

B. Federal Labor Law Neither Proscribes Nor Permits the Conduct Acted on by the Courts of Missouri.

Coincident with the establishment of petitioners' picket line around respondent's plant, respondent filed an unfair labor practice charge with the NLRB, which then had before it petitioners' charges against respondent of alleged refusal to bargain. Respondent's charge was filed under Section 8 (b) (4) (D), which states:

> "It shall be an unfair labor practice for a labor organization * * * to engage in * * * a strike * * * where an object thereof is * * * forcing or requiring any employer to assign particular work to employees in a particular labor organization * * *."

A hearing was held before a hearing officer of the Board under Section 10 (k) of the Act, which provides that:

> "whenever it is charged that any person has engaged in an unfair labor practice within the meaning of Section 8 (b) (4) (D) of the Act, the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen * * *."

The Board held that Section 8 (b) (4) (D) requires a present demand for assignment of **particular** (i. e., presently existing) work. Petitioners were making demands as to work which would be required in the future, but were not then demanding the assignment of presently

existing work for the reason that none existed at the time. Respondent did not contend that the demands related to presently existing work, but erroneously believed the Section applied as well to present demands for future work.

The Board stated in its decision (101 NLRB 346):

> "* * * Accordingly, we conclude that no dispute within the meaning of the Act was created either when the strike action was taken or when the incorporation of the provision in question was demanded.
>
> "As we have found on the record before us no 'dispute' within the meaning of Sections 8 (b) (4) (D) and 10 (k), we shall quash the notice of hearing issued in this proceeding."

Since the power of the Board to act in these circumstances is the power "to hear and determine the **dispute** * * *," it is submitted that the Supreme Court of Missouri correctly held that the NLRB, by finding that the unquestioned facts were not a "dispute" within the meaning of Section 8 (b) (4) (D) and 10 (k), necessarily found that the Board had **no** power to hear the facts involving petitioners and respondent and to enter a determination with respect thereto.

Yet there remained the uncontroverted facts which were before the Supreme Court of Missouri, of coercion by petitioners against respondent to compel respondent to join other businesses in concerted action to compel breach of contract. This was coercion of respondent to commit a felony under Missouri law. Certainly the NLRB in holding that certain facts did not constitute a "dispute" to which Section 8 (b) (4) (D) applied was not making a finding as to the truth of the facts presented, or whether they established coercion of respondent to commit a felony, which was the only issue for decision by the Missouri Court.

And certainly a finding by the NLRB that certain facts did not constitute a "dispute" in which Section 8 (b) (4) (D) would forbid a **strike** was not a finding that one of the facts—picketing—was therefore protected from action by a State court where that picketing was the means of coercing commission of a non-labor felony in violation of a Missouri law of general application.[6]

On the contrary, it is submitted that the decision of the NLRB supports the conclusion that even if the picketing by petitioners is looked upon as a "labor activity," it was conduct neither

> "made a right under federal law nor a violation of it and which had the coercive effect obvious in this device" (International Union v. Wisc. Empl. Rel. Bd., Briggs & Stratton case [1949], 336 U. S., l. c. 265, 69 S. Ct., l. c. 527, 93 L. Ed., l. c. 669, quoted by the Supreme Court of Missouri in its opinion, R. 118).

C. State Anti-Trust Laws Remain Applicable Within the Field of Labor Law Upon the Fact Situation Found by the Courts of Missouri

Such conduct remains subject to the general law of the State to the same extent as any other criminal or quasi-criminal conduct which has no "labor activity" overtones. It is conduct coming within the area of permissive state court action under the test proposed by Professor

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[6] "Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. The Labor Management Relations Act declared it to be an unfair labor practice for a union to induce or engage in a strike or concerted refusal to work where an object thereof is any of certain enumerated ones. Sec. 8 (b) (4), 61 Stat. 140, 141, c. 120, 29 USCA, Sec. 158 (b) (4), 9 FCA, title 29, Sec. 158 (b) 4. Nevertheless the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Federal Board may deal with it in any manner." (Briggs & Stratton case, supra, note 4, 336 U. S., l. c. 253, 69 S. Ct., l. c. 521, 93 L. Ed., l. c. 662.)

Cox in the article "Federalism and Labor Relations" (Cox and Seidman, 64 Harvard Law Review 211, l. c. 240):

> "The state courts can no longer apply their common law doctrines to labor disputes affecting commerce. * * * But one must be careful not to press the logic too far. Congress cannot be supposed to have forbade the application of all state laws merely because they impinge upon the concerted conduct of employees in relation to their employer. Congress was primarily concerned with developing a national policy looking toward the adjustment of the often conflicting interests of employers and employees. At times other public interests become involved in such a controversy and where they are predominant, it would seem to lose some of the qualities of a labor dispute. A strike to compel an employer to commit murder or to bribe a public official is not a problem of labor relations, nor is a strike to compel an employer to enter into an illegal combination to fix prices at which goods are sold. The problem of classification is not always so easy, but the point at which other public interests become clearly predominant over concern for adjustment of the conflict between employer and employees should mark, we submit, the limits of exclusive federal control."

The same test was proposed by Professor Cox in his article "Federalism in Labor Law" to which petitioners make extensive reference (67 Harvard Law Review 1297, l. c. 1330, 1331):

> "* * * Applied conversely the suggested test permits the enforcement of any general rules treating the same misconduct as unlawful without regard to whether it occurs in, or outside of, a context of labor-management relations. A union may be prosecuted for a combination to fix the price at which goods are

sold or for refusing to furnish men to foreign contractors in order to preserve local construction jobs for local firms. Similarly, the federal law would not preclude prosecuting a union for erecting geographical trade barriers such as the monopoly of sales of electrical equipment which Local 3 of the Electrical Workers established for New York manufacturers. Such direct restraints on competition are treated as per se violations of the antitrust laws, without regard to whether the originator of the restraint is employer or labor union, because the risk of consumer injury overrides all other consideration."

It is submitted, then, that even the arguments and tests adopted by petitioners herein, on the assumption that the action of the Supreme Court of Missouri has invaded the field of labor law, would not prevent State action to enjoin a per se violation of the State anti-trust law, and picketing to coerce respondent to commit a felonious violation of the State anti-trust law undoubtedly qualifies as a per se violation of that State law.

Unfortunately, Professor Cox's analysis of the decision of the Supreme Court of Missouri in the instant case is predicated on the erroneous assumption that the Missouri court sat in judgment of the first combination between labor and business, and enjoined the picketing because the end sought by the first combination would operate to restrain trade. This assumption leads to his conclusion that the Supreme Court of Missouri was seeking, by application of its Anti-Trade Restraint statute, to effect a determination of the labor policy involved in a change of bargaining representatives for the Millwrights employed by the independent construction contractors.

Instead, it is clear that the Supreme Court of Missouri found with respect to the first combination of labor and business merely that membership of respondent therein

would constitute a felony, since membership in that combination involved pressure by the business members upon the construction contractors to compel breach of existing contracts, enforced by a concerted refasal to deal with the contractors.

Thus it is submitted that properly considered, the decision of the Supreme Court of Missouri did no more than enjoin coercion by the second combination (petitioners) to compel respondent to commit a felony—a decision comparable to enjoining picketing to compel an individual to commit murder.[7]

In the spring of 1952 respondent was faced with a situation vital to its existence, which situation required immediate determination. Respondent was being subjected to powerful coercion or pressure by petitioners to force respondent to join an unlawful combination of labor and business. The conspiracy already was complete and therefore violated the anti-trade restraint laws of Missouri.

The NLRB **could not** give and did not give respondent any relief from the coercion. In these circumstances, if respondent sought its own solution by joining the conspiracy, certainly neither the NLRB nor any Federal labor law could prevent respondent from being liable in civil law actions for triple damages under Section 416.090 of the Missouri statute. Neither the NLRB nor any Federal labor law could prevent respondent from being prosecuted and convicted in the criminal courts of Missouri under Section 416.070 of the Missouri statute, and punished by forfeiture of its corporate franchise and forfeiture of all or part of its property to the State.

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[7] The analogy is not unfairly drawn. Conviction of an individual of the felony of murder can result in the loss of the individual's life. Conviction of a corporation of the felony of violation of the Missouri Anti-Trade Restraint law can result in loss of the corporation's charter—its life under State law.

The p sition of respondent was identical to that of the Empire Storage and Ice Company in the **Giboney** case, as stated by this Court (336 U. S. 490, l. c. 493, 93 L. Ed. 834, l. c. 838, 839). The language of this Court may be paraphrased as follows:

> "In this dilemma, Anheuser-Busch was faced with three alternatives: It could continue to have the work of moving, erecting and installing machinery in new and expanded buildings at its brewery done by the independent construction contractors, all of whom employed Millwrights for this purpose, in which event it would be compelled to wage a fight for survival against overwhelming odds; it could refuse to deal with the independent construction contractors unless they complied with the Union's ultimatum that they employ Machinists for this purpose, thereby relieving itself from further conflict with the Union, in which event it would be subject to prosecution for crime and suits for triple damages; it could invoke the protection of the law. The last alternative was adopted."

CONCLUSION.

For the reasons hereinbefore stated, we submit that the judgment below should be affirmed and pray that this be done.

Respectfully submitted,

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APPENDIX A.

Pertinent provisions of Chapter 416 of the Revised Statutes of Missouri referred to in this brief.

Chapter 416: Monopolies, Discriminations and Conspiracies.

Section 416.010, "Combination in restraint of trade declared a conspiracy":

> "Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400" (21 V. A. M. S., Sec. 416.010).

Section 416.050, "Penalties":

> "Any person violating any of the provisions of sections 416.010 to 416.100, 416.240, 416.260 to 416.290 and 416.400 or who shall do any act prohibited or declared unlawful by the provisions of said sections, shall be adjudged guilty of a felony, * * *" (21 V. A. M. S., Sec. 416.050).

Section 416.070, "Offending corporations to forfeit charter and property":

> "Any corporation * * * which shall violate any of the provisions of sections 416.010 to 416.100, * * * may * * * be declared by the court to have forfeited its corporate rights and franchises * * *; and such

court may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, or * * * assess against it a fine * * *" (21 V. A. M. S., Sec. 416.070).

Section 416.090, "Persons injured to recover triple damages":

"Any person injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by sections 416.010 to 416.100 * * * shall recover threefold the damages by him sustained, and the costs of the suit, including a reasonable attorney's fee" (21 V. A. M. S., Sec. 416.090).

The provisions of Chapter 416 were incorporated into Missouri statutory law in the period 1891-1907. They are in no sense "labor legislation" or "labor regulatory statutes."